

AG Contract No.: KR04-0197TRN
ADOT-ECS File No.: JPA 03-118
TRACS No.: H4662 01L
Project No.: 060 PN 212
Project: Cactus Ferruginous Pygmy-Owl Study
Section: US 60, Florence Junction - Superior
Budget Source Item No.: 70704

INTERAGENCY AGREEMENT

BETWEEN
THE ARIZONA DEPARTMENT OF TRANSPORTATION
AND
ARIZONA GAME AND FISH DEPARTMENT

THIS AGREEMENT is entered into this date 14th of July 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, (the "State") and the ARIZONA GAME AND FISH DEPARTMENT, acting by and through the ("AGFD")

II. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The AGFD is empowered by the Arizona Revised Statutes Section § 17 231 B 7 to enter into this agreement and has delegated to the undersigned authority to execute this agreement on behalf of the AGFD.
3. The State has agreed to contribute an in-lieu payment of \$100,000.00 to AGFD to conduct research studies on the effects of road widening construction impacts to the nesting and structure habitat of the Cactus Ferruginous Pygmy-owls, hereinafter referred to as the "Project". The AGFD will coordinate with the US Fish and Wildlife Service (FWS) on the use of the funds, and will provide, progress reports and a final report for the funded research to the State, FWS and FHWA.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26959
Filed with the Secretary of State
Date Filed: 07/14/04

Janice K. Brewer
Secretary of State

By: Jimmy D. Graenewald

SCOPE OF WORK

1. The State will:
 - a. Appoint a Project Manager to interface with the AGFD relating to the Project.
 - b. Provide the AGFD with information and data as may be reasonably available to assist in the Project work.
 - c. Upon receipt and approval of an invoice from the AGFD, remit \$100,000.00 for research studies associated with the Project.
2. The AGFD will:
 - a. Upon execution of this agreement submit an invoice to the State with the "ADOT Progress Payment Report Form" (attached), in the amount of \$100,000.00 for research studies associated with the Project. An electronic form can be requested through Joint Project Administration, at the address provided under Section III. Paragraph 6.
 - b. Appoint a Project Coordinator at AGFD to interface with the State relating to the Project.
 - c. Provide quarterly reports and a final report for the funded research to the Project Manager for the State, FWS, and FHWA.

III. MISCELLANEOUS PROVISIONS

1. Title to all documents, reports and other deliverables prepared by the AGFD in performance of this agreement shall rest jointly with the State and the AGFD.
2. This agreement shall become effective upon signatures by the parties hereto, and shall remain in force and effect until completion of said project and final accounting. However, this agreement may be cancelled upon mutual agreement, if the proposed objectives outlined in this agreement are not being met, with (30) thirty-day written notice to the other party.
3. The parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination and affirmative action.
4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.
5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.
6. In the event of any controversy that may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this agreement relating to the agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

For Contract:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, Arizona 85007

Arizona Game and Fish Department,
R E. Schweinsburg, Research Branch
2221 West Greenway Road
Phoenix, Arizona 85023

For Billing Notices:

Arizona Department of Transportation
Attn: Vickie Bever Project Manager
205 S. 17th Avenue – Mail Drop 614E
Phone: (602) 712-8161

Arizona Game and Fish Department,
Melba Davidson, Funds and Planning
2221 West Greenway Road
Phoenix, Arizona 85023
Phone: (602) 789-3251

8. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**ARIZONA GAME AND FISH DEPARTMENT
REGION VI**

**STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION**

By 
DUANE SHROUFE
Director

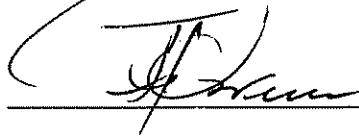
By 
DALE BUSKIRK, Division Director
Transportation Planning Division

ATTORNEY APPROVAL FORM

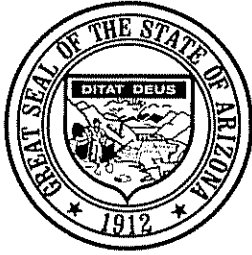
FOR THE ARIZONA GAME AND FISH DEPARTMENT

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the ARIZONA GAME AND FISH DEPARTMENT, an agreement among public agencies, which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declare this agreement to be in proper form and within the powers and authority granted to the AGFD under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this 23RD day of JUNE, 2004

A handwritten signature in black ink, appearing to be "J. H. ...", is written over a horizontal line.

Attorney



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0197TRN (**JPA 03-118**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED July 8, 2004.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section